HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.479 of 2007

Between:

Seguri Jangaiah

… Appellant

And

A.P Khadi & Village Industries,
Rep., by its Asst. Director,
Mahabiibnagar, Mahaboobnagar District
and another

… Respondents

::JUDGMENT::

Counsel for the appellant : Shri M. Surender Rao

June 14, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 18.12.2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant questioning the action of District Collector, Mahabubnagar not to accept the highest bid given by him for purchase of the property belonging to Khadi Gramodyog Sangh, Kalwakurthi (for short, 'the Sangh').

A perusal of the record shows that in furtherance of permission given by the District Collector for recovery of Rs.7,00,000/- as arrears of land revenue, Assistant Director, Andhra Pradesh Khadi and Village Industries, Mahabubnagar issued notice dated 7.8.2006 for auction of 16 guntas of land (1936 square yards) belonging to the Sangh

comprised in Survey No. 56/A situated in Kalwakurthi Village and Mandal. The date of auction was fixed as 26.8.2006. The appellant participated in the auction and gave highest bid of Rs.14,00,000/-. He deposited Rs.3,50,000/- including the earnest money deposit, but the District Collector did not approve his bid and communicated this to the Assistant Director concerned who, in turn, sent letter dated 11.9.2006 to the appellant along with an amount of Rs.3,50,000/-. Later on, the Assistant Director vide letter dated 18.9.2006 informed the appellant that the District Magistrate has cancelled the auction held on 26.8.2006.

The appellant challenged the cancellation of auction in Writ Petition No.21698 of 2006 mainly on the ground of violation of the scheme of Sections 36, 37, 37A and 38 of the Andhra Pradesh Revenue Recovery Act, 1864 (for short, 'the Act'). The learned Single Judge rejected the appellant's challenge to the cancellation of his bid by observing that non-disclosure of reason in the communications sent by the District Collector does not have the effect of vitiating the non-confirmation of his bid. The learned Single Judge noted that in terms of Section 36 (2) of the Act, the Assistant Director was required to give one month's notice for auctioning the property of the Sangh and held that the highest bid given by the petitioner (the appellant herein) was rightly not confirmed because the required notice of one month was not given. The learned Single Judge further held that the District Collector could have exercised power under Section 38 (3) of the Act.

Shri M. Surender Rao, learned counsel for the appellant fairly conceded that the notice issued by the Assistant Director for auctioning the property of the Sangh was not in conformity with the mandate of Section 36 (2) of the Act, but argued that the District Collector should have overlooked this minor violation of the statute and approved the bid given by him, which was double the reserve price of Rs.7 lakhs. Learned counsel further argued that failure of the Assistant Director to issue notice in terms of Section 36 (2) did not

cause prejudice to any bidder and, therefore, the District Collector should not have cancelled the auction and that too without giving the appellant action oriented notice and opportunity of hearing.

In our opinion, there is no merit in either of the contentions. Section 36 of the Act, the violation of which prompted the District Collector not to approve the bid given by the appellant, reads as under:

> **36. Procedure in sale of immovable property:-** In the sale of immovable property under this Act the following Rules shall be observed:
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> **(1) Publication:-** The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector of the district in which the property is situated, or other officer empowered by the Collector in that behalf. The time may be either previous to or after the expiration of the fasli year.
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> **(2) Notification one month before sale:-** Previous to the sale the Collector, or other officer empowered by the Collector in that behalf, shall issue a notice thereof in English and in the language of the district, specifying the name of the defaulter; the position and extent of land of his buildings thereon; the amount of revenue assessed on the land, or upon its different sections. The proportion of the public revenue due during the remainder of the current fasli; and the time, place, and conditions of sale. This notice shall be fixed up one month at least before the sale in the Collector's Office and in the Taluk cutcherry, in the nearest police station house, and on some conspicuous part of the land.

Section 38 of the Act on which reliance has been placed by the learned counsel for the appellant also reads as under:

> **38. Application to set aside sale:-** (1) At any time within thirty days from the date of the sale of immovable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake or fraud, in publishing or conducting it; but, except as otherwise as hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reasons thereof.
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> (2) If the application be allowed, the Collector shall set aside the

sale and may direct a fresh one.

(3) **Order confirming or setting aside sale**:- On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made under Section 37-A or under clause (1) of this section or if such application has been made and rejected, the Collector shall make an order confirming the sale provided that, if he shall have reason to think that the sale sought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

(4) **Refund of deposit or purchase money when sale set aside**:- Whenever the sale of any lands is not so confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser.

(5) **On confirmation of sale purchaser's name to be registered**:- After the confirmation of any such sale, the Collector shall register the lands sold in the name of the person declared to be the purchaser and shall execute and grant a certificate of sale bearing his seal and signature to such purchaser.

(6) **Certificate of sale**:- Such certificate shall state the property sole and name of the purchaser, and it shall be conclusive evidence of the fact of the purchase in all Courts and Tribunals, where it may be necessary to prove the same; and no proof of the Collector's seal or signature shall be necessary, unless the authority before whom it is produced shall have reason to doubt its genuineness.

A reading of the plain language of Section 36 (2) makes it clear that the Collector or an officer empowered in that behalf has to issue a notice in English and also in the language of the district, specifying the name of the defaulter, the possession and extent of land, and the amount of revenue assessed on it. The notice is required to be fixed at least one month before the actual sale. Section 38 (3) empowers the District Collector to suo motu cancel the sale.

In the present case, the auction notice was issued on 7.8.2006 and the date of auction was fixed as 26.8.2006. Therefore, it is evident that the auction notice was not in conformity with the mandate of

Section 36 (2) of the Act. Therefore, the decision of the District Collector not to approve the auction cannot be faulted. Rather, the same will be deemed to have been taken in terms of Section 38 (3).

The learned Single Judge, after noticing the relevant statutory provisions, observed as under:

> "Apart from the procedure contemplated to set aside the sale of immovable property by a person owing/claiming interest in the immovable property as under Section 38-A of the Act. The above section (Section 38) also contemplates the procedure to set aside the sale. Under subsection (1) of Section 38 of the Act, within thirty days a person may make application to Collector to set aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting sale duly showing that such irregularity has resulted in substantial injury to the applicant. Subsection (3) of Section 38 of the Act contemplates setting aside of the sale by the Collector even if such an application is not made either under Section 38(1) or 38-A of the Act. Whether the sale is set aside on an application or without there being an application, under subsection (2) of Section 38 of the Act, the Collector shall direct a fresh sale. It only means duly following the procedure contemplated under Section 36 of the Act. Therefore, it is not possible to accept the submission that the Collector has no power to set aside the sale without there being an application to that effect. This Court has perused the file produced before this Court, which would show that the Collector came to the conclusion that the procedure contemplated under Section 36 of the Act was not followed. Such a ground is one contemplated under Section 38(1) of the Act for setting aside the sale and there is no strong reason not to read such a ground even into Section 38(3) of the Act. For this reason, the impugned order of the first respondent informing the petitioner that the sale has not been confirmed, is legal and cannot be invalidated on any ground."

We entirely agree with the learned Single Judge that the non-confirmation of the sale by the District Collector was legal and justified.

There is another reason for our disinclination to entertain the appellant's challenge to the decision of the District Collector not to

confirm the sale. A direction by the Court to the District Collector to confirm the sale would tantamount to restoration of a patent illegality committed by the Assistant Director, who, as mentioned above, issued auction notice in violation of the mandate of Section 36 (2). Therefore, keeping in view the settled law that in exercise of power under Article 226 of the Constitution of India, the High Court will not issue a writ, which would result in restoration of an illegality, we refrain from annulling the decision of the District Collector cancelling the sale.

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, WAMP No.917 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

June 14, 2007

C.V. NAGARJUNA REDDY, J

svs